



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lloyd-Lamont Design, Inc.

File: B-270090.3

Date: February 13, 1996

Kenneth S. Kramer, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.

Arthur I. Leaderman, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for Remtech Services, Inc., an intervenor.

Samuel D. Kreiter, Esq., Department of the Navy, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that agency improperly evaluated proposals is denied where the record shows that the agency evaluated in accordance with the criteria announced in the solicitation, and the record reasonably supports the evaluators' conclusions.

2. Where the solicitation announced that the Department of the Navy intended to evaluate proposals and make award on the basis of initial proposals without conducting discussions, and the Navy reasonably determined, on the basis of it evaluation of the initial proposals, that the technically superior, slightly higher-cost offeror represented the best value under the solicitation's evaluation scheme, the Navy was not required to conduct discussions with the protester.

DECISION

Lloyd-Lamont Design, Inc. (LLD) protests the award of a contract to Remtech Services, Inc. under request for proposals (RFP) No. N00030-96-R-0200, issued by the Department of the Navy for training acquisition and support. The protester argues that the agency's evaluation of proposals was unreasonable; that the Navy improperly failed to conduct discussions; and that the agency's cost/technical tradeoff was flawed.

We deny the protest.

BACKGROUND

The RFP was issued as a competitive, small disadvantaged business set-aside under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994). The RFP contemplated the award of a cost-plus-fixed-fee, level-of-effort contract for training acquisition and support services related to strategic weapons systems (SWS), for a base year with options for performing various requirements through fiscal year 2000. Section M of the RFP listed the following evaluation factors in descending order of importance: (1) personnel; (2) technical approach; (3) corporate experience; (4) management approach; (5) transition plan; and (6) facilities and equipment. Within each factor, the RFP listed subfactors of varying importance. Cost was to be evaluated for reasonableness and realism. Award was to be made to the offeror whose proposal represented the best value to the government. The RFP stated that in making the "best value" determination, the agency would apply a tradeoff formula announced in the solicitation which permitted the agency to pay up to a 30 percent premium for a technically superior proposal.

Three firms, including the protester and the awardee, submitted proposals in response to the RFP. Each offeror proposed a different major subcontractor, all of which had been incumbents under prior contracts for these services. A source selection evaluation board (SSEB) evaluated technical proposals by assigning numerical point scores (ranging from 0 to 100 points) under each subfactor; cost was not point-scored. A source selection advisory council (SSAC) reviewed the SSEB's results and computed a final weighted point score for each proposal. LLD's proposal earned a total weighted score of 90.596 points; Remtech's proposal earned a total score of 93.402 points. Remtech's proposed cost, \$10,417,985, was slightly higher than LLD's, \$10,257,424--a difference of \$160,561 over the life of the contract, including options.

Based on the results of the evaluation, the SSAC concluded that Remtech's proposal offered the best value to the government, and recommended award to that firm. The source selection authority (SSA) agreed with that recommendation, and on September 28, Remtech was awarded the contract. The agency debriefed LLD on October 3, and this protest followed.¹

¹Subsequently, the agency informed us that the head of the contracting activity had determined that it was in the government's best interest to continue performance of the contract, notwithstanding the protest. See 31 U.S.C. § 3553(d)(3)(C)(i)(I) (1994).

PROTESTER'S CONTENTIONS

LLD argues that the agency's evaluation of competing proposals was flawed in several respects, particularly with respect to the evaluation of its proposal under the "personnel" and "management approach" factors. Specifically, the protester argues that its proposal deserved a higher rating because of its "superior, qualified personnel" and "proven staffing approach," and that the agency treated Remtech's proposal differently in the evaluation. LLD also argues that the agency improperly awarded the contract without conducting discussions, and that the cost/technical tradeoff was flawed.

ANALYSIS

Evaluation of Proposals

In reviewing a protest challenging an agency's technical evaluation, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. With respect to the protester's contentions regarding the evaluation of proposals, we have reviewed the proposals, individual evaluators' narrative sheets, the team evaluation narratives, and the award recommendation memorandum, and find no basis for questioning the SSEB's ratings.

Although LLD's proposal earned a relatively high score overall, the evaluators considered several aspects of the proposal weak. Of particular concern was LLD's staffing plan, in which LLD offered what the SSEB considered to be a significant percentage of key personnel on a part-time basis. One evaluator specifically noted that some of LLD's "most qualified [key personnel] fall into this [part-time] category." Another evaluator expressed concern that LLD's approach could create a scheduling conflict, noting that the protester's approach could have a detrimental effect on support tasks and scheduling. The evaluators also noted that LLD's proposal did not indicate "SWS experience in manning analysis support," and showed "very little experience in [information resources management]," one of two areas critical for successful contract performance. One evaluator specifically noted that given the number of employees proposed with college degrees in mathematics and computer sciences, LLD's personnel assignments did not correlate with the employees' field of study; it was found that while a majority of proposed personnel had college degrees, some of LLD's key personnel held degrees in subjects unrelated to their proposed functions.

The record shows that the SSEB considered LLD's proposed staffing plan to be the significant weakness in the proposal, affecting the most important evaluation factor, "personnel," as well as the "management approach" factor. The agency had recently experienced performance problems under the incumbent contract (which had been awarded to LLD's proposed major subcontractor in this procurement), primarily as a result of that firm's use of part-time personnel during contract performance. The agency explains that part-time personnel would likely be assigned to other projects, potentially preventing short-term reassignments to the project. In addition, the agency found that under LLD's staffing plan, although fully dedicated personnel could be reassigned to address immediate problems, since the majority of them were tasked at higher levels, their reassignment could interrupt ongoing, critical work. In short, the agency anticipated that under LLD's approach, the Navy could experience similar performance problems as it had under the incumbent contract. Primarily because of this weakness, the SSEB downgraded LLD's proposal under the "personnel" factor, and slightly downgraded LLD's proposal under the relevant subfactor² within the "management approach" factor.

In view of the SSEB's conclusions regarding the adverse impact LLD's staffing plan could have on the successful performance of the contract, we have no basis to question LLD's score under the personnel or management approach evaluation factors. The SSEB's ratings of LLD's proposal under these factors reasonably reflect the evaluators' concerns over the impact LLD's staffing plan could have on contract performance, particularly in view of the agency's recent experience under the incumbent contract which used LLD's approach. Further, we have reviewed the record in light of the protester's allegations regarding unequal treatment of LLD's and Remtech's proposals in the evaluation and find no evidence supporting the protester's allegation that offerors were treated differently. LLD's mere disagreement with the evaluators' judgment does not make the SSEB's ratings unreasonable. Calspan Corp., B-258441, Jan. 19, 1995, 95-1 CPD ¶ 28.³

²Under this subfactor, evaluators were to score proposals based on the following question: "[d]oes the offeror have the ability to adapt to emergent problems, including making available resources for short term specialized projects?"

³The protester also takes issue with the evaluation of its proposal with respect to SWS experience and educational backgrounds of key personnel. The agency points out, however, that even if LLD's proposal had been assigned a perfect score (100 points) in the relevant subfactors, the effect on LLD's final weighted score would be an immaterial change from 90.596 points to 91.331 points.

Cost/Technical Tradeoff

The RFP announced that in deciding which proposal offered the best value, the Navy would make a cost/technical tradeoff in accordance with the following formula:

"As indicated on the graph, the [g]overnment is willing to pay [30] percent more for an offeror with a proposal that earns the highest possible technical score (i.e. 100 points), than an offeror with the lowest evaluated price who has the lowest possible technically acceptable proposal score (i.e. 75 points). For example, as the technical quality of a proposal increases, the acceptable increase in the price premium also increases. Any point above the line [on the attached graph] represents an offer above the premium the [g]overnment is willing to pay; therefore, an award on the basis of that offer would not be deemed the best value to the [g]overnment. Conversely, any point on or below the line represents an offer within the premium and one which the [g]overnment may consider for award. The [g]overnment will make award to the [o]fferor, on or below the line, which represents the best value to the [g]overnment."

The protester contends that the agency mechanically applied this formula, and argues that the position of offerors' total scores on the graph, by itself, was an insufficient basis upon which to make award to Remtech. According to the protester, the agency was required to make a separate determination justifying paying a 1.6 percent premium for the technical benefits of Remtech's proposal.

In a negotiated procurement, unless the RFP so specifies, there is no requirement that award be based on lowest cost. A procuring agency has the discretion to select a more highly-rated technical proposal if doing so is reasonable and is consistent with the evaluation scheme set forth in the RFP. Management Sys. Designers, Inc., B-244383.3, Sept. 30, 1991, 91-2 CPD ¶ 310. We will uphold an award to a higher rated offeror with higher proposed costs where the agency reasonably determines that the cost premium was justified considering the technical superiority of the selected offeror's proposal. United Telecontrol Elecs., Inc., B-235774.2, Nov. 7, 1989, 89-2 CPD ¶ 433. Even where a source selection official does not specifically discuss the technical/cost tradeoff in the selection decision document, we will not object if the tradeoff is supported by the record. Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430.

Here, although, as LLD correctly points out, the SSA did not specifically explain his rationale for paying more for Remtech's technically superior proposal, we think that the record reasonably supports the tradeoff decision. The record shows that the protester's proposal suffered from a noteworthy weakness with respect to staffing

that the evaluators reasonably found problematic and was the primary reason that Remtech's proposal was found technically superior. Given the evaluators' legitimate concerns over the impact of the weaknesses in LLD's proposal on the successful performance of the contract, and in light of the relatively minimal difference in total cost between LLD's and Remtech's proposal, the SSA's cost/technical tradeoff decision was unobjectionable.

Discussions

LLD argues that the agency improperly awarded a contract to Remtech at a higher cost without conducting discussions. The protester argues that given the evaluators' concern over its proposed staffing, the agency should have afforded it an opportunity to explain its rationale for the proposed part-time staffing approach, for example, which would have raised its ratings under several factors.

Where, as here, an RFP sets forth the provisions of Federal Acquisition Regulation (FAR) § 52.215-16, Alternate III, advising offerors of the agency's intent to award without conducting discussions, a Department of Defense contracting agency may properly do so, provided the contracting officer determines that discussions are unnecessary. FAR § 15.610(a)(4) (FAC 90-29);⁴ Infotec Dev., Inc., B-258198 *et al.*, Dec. 27, 1994, 95-1 CPD ¶ 52. The discretion of the contracting officer to determine whether or not to hold discussions is not unfettered; we will review the exercise of that discretion to ensure that it was reasonably based on the particular circumstances of the procurement, including consideration of the proposals received and the basis for the selection decision. See Facilities Management Co., Inc., B-259731.2, May 23, 1995, 95-1 CPD ¶ 274; The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174.

Here, the Navy reasonably determined that Remtech's proposal was clearly technically superior to LLD's proposal. The difficulties in LLD's proposed staffing plan cited by the evaluators were reasonably based and represented a clear discriminator in finding Remtech's proposal to be technically superior. Based on our review of the record, we think that given the evaluators' conclusions, the agency reasonably had no doubt that Remtech's slightly higher cost proposal offered the best value to the government. Under these circumstances, the Navy could properly make award to Remtech on the basis of initial proposals. Compare Information Spectrum, Inc., B-256609.3; B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251 (discussions were not necessary where the agency reasonably could determine which offer represented the best value to the government) with The Jonathan Corp.; Metro Mach. Corp., *supra* (discussions were necessary where the agency could not

⁴This authority now extends to civilian agencies as well. See 41 U.S.C § 253b(d) (1994); FAR § 15.610(a)(3) (FAC 90-31).

reasonably determine which proposal represented the best value to the government, given the significant discrepancy between the agency's cost realism estimate and the cost proposals received and the closeness of the competition); see also TRW, Inc., B-254045.2, Jan. 10, 1994, 94-1 CPD ¶ 18.

The protest is denied.

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